

INTERGOVERNMENTAL AGREEMENT
Between the
Nebraska Department of Environmental Quality
and the
City of Lincoln
Regarding the Implementation of the
Storm Water Management Plan Program

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into by and between the Nebraska Department of Environmental Quality (NDEQ) and the City of Lincoln (Sponsor)

WHEREAS, the Sponsor agrees to utilize funds which have been made available to NDEQ pursuant to Nebraska State Statute 46-2,139; and

WHEREAS, grant monies are being awarded to cities and/or counties with an NDEQ-approved storm water management plan to fund the duties required under the federal Clean Water Act, 33 U.S.C. 1251 et seq., as such act existed on January 1, 2006, regarding storm water runoff under the National Pollutant Discharge Elimination System requirements; and

WHEREAS, grant funds in an amount up to **\$ 528,128** and a nonfederal match of at least **\$ 105,626** are to be used to implement the entitled "Storm Water Management Plan Program".

NOW, THEREFORE, the parties do hereby agree to the terms and conditions of this Agreement as follows:

I. TERM OF AGREEMENT

This Agreement will go into effect **December 1, 2009** and will remain in effect until all identified tasks are completed for the project "Storm Water Management Plan Program"; unless terminated under §P of this Intergovernmental Agreement, but will not remain in effect past **June 30, 2011** unless extended by amendment.

II. CONDITIONS OF AGREEMENT

A. General Conditions

1. The Sponsor agrees to submit annual progress reports to the NDEQ by July 31st. These reports shall address project activity for the previous state fiscal year, which runs from July 1st – June 30th, and contain the following components:
 - a. Progress to date;
 - b. Financial report of money spent for each approved activity element;
 - c. Certification that equipment purchased from grant funds was used only for grant purposes;
 - d. Significant findings or events;
 - e. Corrective actions taken to resolve any problems that are encountered.
2. The Sponsor agrees that if indirect costs are authorized, as specified in the approved plan, they will be charged at the approved indirect rate.
3. The Sponsor agrees that a copy of any contract, interagency agreement, subagreement and/or procurement of equipment under this grant for a value of \$5,000 or more, must receive NDEQ approval prior to expenditure of funds associated with those transactions. Copies of all contracts, procurements, subagreements, and interagency agreements will be provided to the NDEQ with the annual report.

4. All equipment purchased with grant funds must be approved, in advance, by the NDEQ. Any such purchased equipment shall be retained by the NDEQ upon Agreement end date unless otherwise authorized in writing by the NDEQ.
5. A Quality Assurance/Quality Control plan must be approved by NDEQ prior to expending any funds for environmental monitoring. Any environmental data collected must be provided to NDEQ.
6. The Sponsor agrees to recognize the contributions and/or involvement of the Nebraska Department of Environmental Quality in project publicity, reports, newsletters, and other materials. The Sponsor shall work with the NDEQ to ensure that all necessary peer review requirements are met. A minimum of 6 copies of outreach material (printed or other media) produced under this grant shall be provided to the NDEQ unless otherwise specified.
7. A final project report must be submitted to NDEQ within 30 days after completion of the project or the termination date, whichever is earlier.

B. Statement of Costs

The Sponsor will submit with their annual report a cost documentation of project expenses. For purposes of this agreement, expenditures and match claims shall be related to budget items as described in the approved work plan, included as **Attachment A**. The Sponsor must contribute and report a 20% cash match by completion of the project.

C. Disbursements

1. The Sponsor shall receive full payment of the award amount within thirty (30) working days after receipt of this Intergovernmental Agreement signed by the Sponsor's authorized representative. The NDEQ shall not be held responsible for delays in payment, due to causes beyond its control.
2. The Sponsor must make expenditures for activities only in the attached work plan. Amendments to the work plan can only be made with approval from the Department.
3. The total amount of payments under this Agreement shall not exceed **\$ 528,128**.

D. Work Description and Schedule

This Agreement encompasses the project commonly known as "Storm Water Management Plan Program". The project shall complete objectives and work items as described in the work plan (**Attachment A**). Activities in the work plan are taken from the Storm Water Management Plan of the Sponsor's Municipal Separate Storm Sewer System permit. Amendments to the work plan must be approved by the Department and reflect activities within the permit's Storm Water Management Plan. The work plan is hereby incorporated into this document in its' entirety.

E. Amendments

This agreement may be amended in writing at any time by mutual agreement of the parties, except insofar as any proposed amendments are in any way contrary to applicable law or requirements of the NDEQ.

F. Forfeiture, Repayment and Delays in Disbursement of Funds

Violation of any of the conditions of this Agreement by the Sponsor or failure of the Sponsor to complete and maintain the project in the manner described in the work plan (**Attachment A**), including any amendments thereto which have been properly approved by the NDEQ, may result in the recovery of any or all funds disbursed by the NDEQ. Any funding expended for an unapproved activity shall be forfeited.

G. Remedies Not Exclusive

The use by either the Sponsor or the NDEQ of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party from using such remedy, or limit the application of any other remedy provided by law.

H. Assignment

No assignment or transfer of this agreement or any part hereof, rights hereunder, or interest herein by the Sponsor shall be valid unless and until it is approved by the NDEQ and made subject to such reasonable terms and conditions as the NDEQ may impose.

I. Waiver of Rights

The Sponsor or NDEQ may from time to time waive any of their rights under this Agreement. However, any waiver of rights with respect to a default of any condition of this Agreement shall not be deemed to be a waiver with respect to any other default.

J. Applicable Rules and Regulations

Both parties shall abide by all applicable rules and regulations of the NDEQ including any that may be adopted subsequent to the effective date of this Agreement, except those that would invalidate or be inconsistent with the provisions of this Agreement.

K. Inspection of Books, Records and Reports

The duly authorized representative of either party shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Agreement or related matters during regular office hours. Each party shall maintain and make available for such inspection accurate records of all its costs, disbursements and receipts with respect to its activities under this Agreement.

L. Independent Contractor

The Sponsor is and shall perform this Agreement as an independent contractor and as such shall have and maintain exclusive control over all of its employees, agents and operations. Neither the Sponsor nor any person employed by the Sponsor shall act, propose to act or be deemed the NDEQ's agent, representative or employee. The Sponsor assumes full and exclusive responsibility for the payment of all premiums, contributions, payroll taxes and other taxes now or hereafter required by any law or regulation and agrees to comply with all applicable laws, regulations and orders relating to social security, unemployment compensation, OSHA, affirmative action, equal employment opportunity and other laws, regulations and orders of like nature. For any work hereunder subject to the Veterans Readjustment Assistance Act of 1974, or the Rehabilitation Act of 1973, the parties hereto shall comply with all provisions thereof, together with all applicable rules, regulations and orders of the Department of Labor, and the notices required pursuant to 41 CFR 60-1.4, 60-250.4 and 60-741.4 which are hereby incorporated by reference into this Agreement.

M. Nondiscrimination

The Nebraska Fair Employment Practice Act prohibits contractors to the State of Nebraska and their subcontractors from discriminating against any employee, or applicant for employment in the performance of such contracts, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability or national origin. The Sponsor's signature is a guarantee of compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of this Agreement. The Sponsor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this Agreement.

N. Drug Free Workplace

The Sponsor by executing this Agreement, certifies and assures that it operates a drug free workplace as addressed in the State of Nebraska Drug Free Workplace Policy of July 7, 1989.

O. Publication Rights

All parties shall have publication and reproduction rights for all reports and materials which are produced as a result of this Agreement.

P. Termination

This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

1. Not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
2. An opportunity for consultation with the terminating party prior to termination.

Q. New Employee Work Eligibility Status

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

1. Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
2. If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) program.
3. The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108

R. Project Managers

The Project Manager for each party to this agreement shall be as follows. The Project Manager may be changed by any agency upon written notification.

NDEQ

Mary Schroer
Source Water Coordinator/
Watershed Planning Specialist
Planning Unit
402-471-6988

Sponsor

Mr. Benjamin Higgins
Senior Engineer Watershed Management
City of Lincoln
(402) 441-7589

III. SIGNATORIES TO THE INTERGOVERNMENTAL AGREEMENT

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

BY: Thomas R. Lamberson

TITLE: Deputy Director



DATE: November 27, 2009

City of Lincoln

BY: Chris Beutler

TITLE: Mayor

DATE: _____

FEDERAL TAX ID NUMBER: _____

STORM WATER MANAGEMENT PLAN PROGRAM

2009 Work Plan

From the City of Lincoln (Sponsor)
Regarding Implementation of the
Storm Water Management Plan for Permit NE0133671

CONTACT INFORMATION		
PROJECT MANAGER NAME Ben Higgins		TITLE Senior Engineer, Watershed Management
STREET ADDRESS 901 N. 6th Street		E-MAIL ADDRESS bhiggins@lincoln.ne.gov
CITY / STATE / ZIP CODE Lincoln, NE 68508		PHONE NUMBER 402-441-7589
AWARD AMOUNT \$ 528,128	MATCH AMOUNT \$ 105,626	PROJECT END DATE June 30, 2011

ACTIVITY ELEMENTS & TIMELINE				
	Minimum Control Measure	Section/Subsection and Activity Element Description from Approved SWMP	Cost (percentage of grant)	Expected Completion Date
1	Education and Outreach	Implement programs to distribute educational materials and perform public outreach to inform citizens about the impacts that polluted stormwater runoff discharges have on water quality and what steps can be taken to reduce stormwater pollution.	6%	6/30/2011
2	Public Participation and Involvement	Provide opportunities for citizens to participate in the development and implementation of stormwater programs and projects.	3%	6/30/2011
3	Illicit Discharge Detection and Elimination	Conduct a program, including a schedule, to detect and remove illicit discharges and improper disposal into the MS4.	6%	6/30/2011

ATTACHEMENT A

ACTIVITY ELEMENTS & TIMELINE				
	Minimum Control Measure	Section/Subsection and Activity Element Description from Approved SWMP	Cost (percentage of grant)	Expected Completion Date
4	Construction Site Runoff Control	Maintain and enforce a program that requires implementation and maintenance of structural and non-structural best management practices to reduce pollutants in stormwater runoff from construction activity to the MS4. The program shall address construction activity that results in land disturbance of greater than or equal to one acre and construction activity disturbing less than one acre which is part of a larger common plan of development or sale.	23%	6/30/2011
5	Post-Construction Runoff Control	Conduct a program to implement and maintain structural and no-structural best management practices, including source control measures, to reduce pollutants from areas of new development and redevelopment. The program shall include a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from the MS4 which receive discharges from areas of new development and redevelopment after construction is complete.	43%	6/30/2011
6	Pollution Prevention/ Good Housekeeping	Implement a program to reduce pollutants from municipal facilities and public streets that are discharged from the MS4.	2%	6/30/2011
7	Industrial and Related Facilities	Conduct a program to monitor and control pollutants in stormwater discharges to the MS4 from hazardous waste treatment, disposal and recovery facilities, and industrial facilities subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Also industrial facilities that the Permittee determines may potentially contribute a pollutant load to the MS4.	1%	6/30/2011
8	Monitoring	Conduct a program to estimate pollutant loads from discharges of the MS4.	16%	6/30/2011